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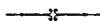
1884

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TENNESSEE HISTORICAL SOCIETY PAPERS.

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HISTORY
OF THE
SOUTH CAROLINA CESSION
AND THE
NORTHERN BOUNDARY OF TENNESSEE.

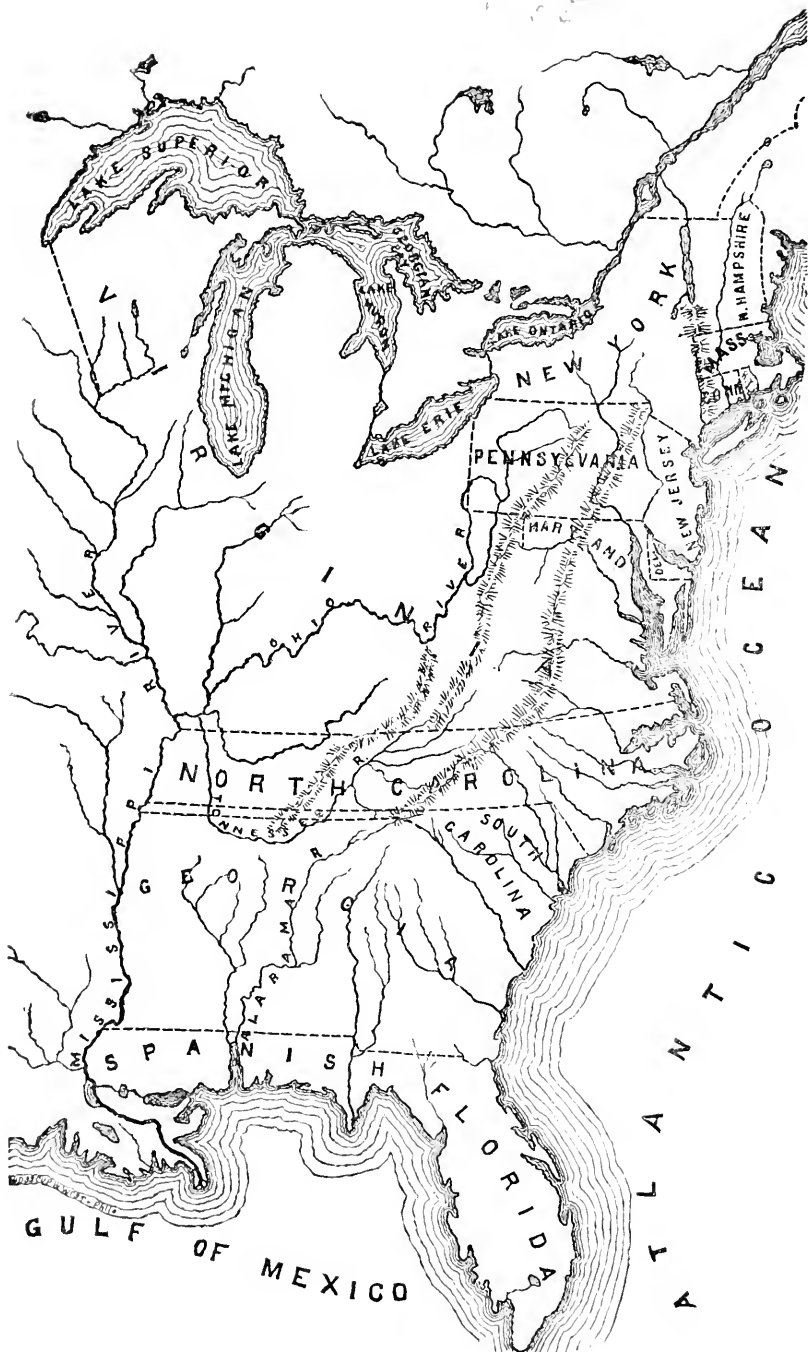


BY W. R. GARRETT, A.M.

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NASHVILLE, TENN.:
SOUTHERN METHODIST PUBLISHING HOUSE.
1884.



South Carolina Cession.

Read Before the Tennessee Historical Society, November 8, 1881.

THERE are some events of history which possess but little historic importance, but for this very reason are invested with peculiar historic interest.

Such incidents, either from the brief period of their existence, or from their failure to produce any marked results upon the general interests of communities, are soon lost to view amid the great and pregnant events which stand out as the landmarks of a nation's history. When in after years these lesser facts are recalled to our notice by the researches of the historian or the antiquarian, they strike us with surprise, and possess all the charms of novelty.

To this class belongs the history of the narrow strip of land touching the southern boundary of North Carolina and Tennessee, and extending from South Carolina to the Mississippi River. This strip is about 12 miles wide and more than 400 miles long, and was ceded by South Carolina to the United States on the 9th day of August, 1787.

The inquirer, whose attention has never before been especially drawn to the subject, is surprised to find that immediately touching the southern border of our State South Carolina should ever have owned a territory of such eccentric dimensions and so peculiarly located. The circumstances connected with its cession to the United States recall a train of interesting associations dating from the settlement of the Southern States to the years 1802 and 1804, when this strip was finally divided between Georgia and Mississippi territory, each receiving the portion immediately north of its own limits.

To understand clearly the causes which led to the possession by South Carolina and the cession to the United States of this singular territory, it is necessary to glance briefly at that period of our history when the thirteen States, after the surrender of Yorktown and the treaty of Paris, having secured their independence, were engaged in constructing a general government. One of the questions of the day most difficult of solution was the government of their western territory.

The troubles of North Carolina in controlling her froward and precocious daughter, Tennessee, are familiar to us all. Similar difficulties were experienced by all the other States owning western territory. These difficulties were caused partly by the natural barriers of remoteness, inaccessibility, imperfect communications, and divergent interests; and partly by the independent and intractable character of the western settlers, who were restive under any restraints which appeared to be imposed by people at a distance. Domestic troubles, however, were by no means the only ones. There was a strong pressure from without, and especially from the New England and Middle States, to induce the great States of Virginia, Georgia, and the Carolinas to surrender their western territory. A glance at the map will show the grounds of their jealousy in entering into a union with these four States, who then owned more than three-fourths of all the territory ceded by Great Britain in the treaty of Paris.

According to Mr. Anderson's History of the United States, only six States, previous to 1781, had exactly defined boundaries—viz., New Hampshire, Rhode Island, New Jersey, Pennsylvania, Maryland, and Delaware. The disputed claims to western territory, and their final adjustment, are all that is now important to consider. These claims, as is well known, were finally ceded to the United States by all claimants.

How different might have been the fate of America, whether for better or for worse, had the four great States held to their western lands with the tenacity usually shown by powerful communities! Virginia might now be extending from the Atlantic to the Mississippi, and from North Carolina to the lakes, embracing an area and numbering a population far overshadowing her sister States, truly the Old Dominion, instead of being shrunken up, as she now is, between the Alleghanies and the ocean, shorn of her lands, and fallen from the first to the tenth State of the Union. The Carolinas and Georgia might now be stretching from the Atlantic to the Mississippi, powerful in lands, population, and resources. Such might have been their fate had these States pursued a selfish policy. Such was the fear of the other nine States, who urged the western cessions, and who looked with just alarm upon a union with neighbors who might in a few years acquire, by the settlement of their western lands, such overpowering influence. Whether such unwieldy States could have held together, whether the same wonderful growth and the same healthy development could have been attained by the West under the management of the parent States, it is now idle to inquire.

Let us trace briefly the pressure of public opinion, the political artifices, and the domestic difficulties which finally impelled the four great States to the voluntary surrender of the largest tract of land ever alienated in the history of the world by powerful communities without bloodshed.

The first public movement in this direction was made in Congress in 1777, in the debates and preliminaries to the adoption of the Articles of Confederation. This contest was for the time ended by the refusal of Virginia to cede her western lands, and the refusal of Maryland to enter the confederation without it. Virginia claimed all of the vast territory north-west of the Ohio River, from her charter, from actual possession, and from the fact that the British were expelled from it by the expedition under George Rogers Clarke, entirely composed of Virginia troops, and under Virginia authority, and after the refusal or failure of the United States to assist. It will be remembered that the Parliament of Great Britain had, in the beginning of the contest with her colonies, passed an act annexing all the territory north-west of the Ohio River to Canada. The expedition of George Rogers Clarke prevented the policy of Great Britain from being successful in limiting the territory of the United States to the Ohio River. The claim of Virginia, however, was not undisputed. Massachusetts and Connecticut claimed that their original charter extended across the belt of this territory, respectively within the latitude of their northern and southern boundaries; and that although they had never exercised any jurisdiction, their rights had not been extinguished by the grants of the Crown which deprived them of the intervening country. New York also claimed from the lakes to the Cumberland Mountains, under certain alleged grants from the Indians. It is evident that these claims of New York were urged for the sole purpose of using them as a lever to compel the other States to abandon their claims to the north-western territory. It is probable, moreover, that Massachusetts and Connecticut entertained no serious thought of acquiring possession of any portion of this territory, but used their claims as a lever to effect a cession from Virginia, the Carolinas, and Georgia, and for other political purposes. Hildreth, who cannot be accused of partiality to Virginia, says, in this connection: "New York, whose claim was the vaguest and most shadowy, led the way by giving a discretionary power to her delegates in Congress to cede that portion of her claims west of a line drawn through the westernmost extremity of Lake Ontario." This was in February, 1780, when the second effort was made to force a cession from the claimant States. Connecticut offered to cede her claims in October

of the same year, retaining that portion since known as the Connecticut Reserve. The Virginia Legislature, on Dec. 30, 1780, made a cession of all claims north-west of the Ohio, but requiring as a condition a guarantee from the United States to the possession of Kentucky. The delegates from New York, who had been vested with discretionary power, made a deed on March 1, 1781, and on the same day the delegates of Maryland, who were authorized to do so, ratified the articles of confederation, and the union of the States was begun.

This cession of Virginia, the only State who resigned any territory really occupied, and whose claims were undisputed, as far north as the forty-first parallel, except by the shadowy claim of New York, is attributed by Hildreth to the terror of invasion upon the approach of Arnold. Bancroft alludes to this cession in the following words: "Virginia did more, avowing her regard for a federal union, and preferring the general good to every object of smaller importance, she resolved to yield her title to the lands north-west of the Ohio, on condition that they should be formed into distinct republican States, and admitted members of the Union; and Jefferson, who from the first had pledged himself to the measure, announced to Congress this great act of his administration in a letter full of hope for the completion of the American Union, and the establishment of free republics in the vast country to which Virginia quitted her claim."

Although these cessions had produced the effect of allaying the jealousy of Maryland, and thus completing the confederation, yet the western lands continued for many years to be a source of disquietude and contention. The following extract from Hildreth presents the condition of affairs in 1782: "With the increasing power of the treasury, the western lands were earnestly looked to as a financial resource. Unwillingness to guarantee to Virginia the possession of Kentucky, and the influence of certain land companies, not without their weight in Congress, on whose behalf a claim was set up to large tracts "west of the mountains," had hitherto prevented the acceptance of the Virginia cession. A committee, the appointment of which the delegates from Virginia vainly opposed, having gone into a full examination of all the claims to western lands, whether on the part of States, companies, or individuals, had made a report upholding the title of New York against all claimants. That report gave rise to many warm debates, which resulted, however, at the close of the cession in the formal acceptance of the deed of New York conveying all her title to Congress—an acceptance intended to compel the other States to make satisfactory cessions. Massachusetts and Virginia voted against it; the Carolinas were divided;

all the other States in the affirmative." Thus matters remained until after the close of the war.

After the disbandment of the army, Congress was very thinly attended. The first business of importance was the acceptance of the cession of Virginia, March, 1784, that State having modified its cession by the omission of the guarantee of Kentucky, and conditioned it with a reservation of the title to land to be sold to repay the soldiers engaged in the expedition of George Rogers Clarke in the conquest of the north-western territory.

"Simultaneously with this acceptance," Jefferson submitted his famous plan for the subdivision and government of the north-west territory, and such other western territory as might be obtained by cessions expected from the other States. The adoption of this report and the subsequent acts of Congress show that the main cause of jealousy was removed, and the title of the United States to the north-west territory was considered substantially assured by this cession of Virginia and its acceptance. As yet, however, the cession of Connecticut had not been accepted, and Massachusetts was sleeping on her claim.

An irresistible public opinion was now brought to bear upon these States and upon the claimants of the territory south of the Ohio River. North Carolina vacillated, her Legislature passing an act in June, 1784, to cede Tennessee, and repealing the same in November, before Congress could accept it. In March, 1785, Massachusetts authorized her delegates to cede her claims, and her cession was accepted on April 19, the anniversary of Lexington. This cession was free from reservations or conditions of a selfish character, and bore on its face the evidence of its patriotic purpose. On Sept. 11, 1786, Congress, in order to complete the title of the United States to the north-west territory, accepted the cession of Connecticut, notwithstanding the sinister reservation by which that shrewd State sought to convert the nominal surrender of her abstract claims into a real establishment of possession of proprietary title. Ceding all claims to jurisdiction, she reserved the proprietary title to the large tract of land known as the "Connecticut Reserve," the proceeds from the sale of which went into the treasury of the State, and now constitutes a large portion of her magnificent school fund, thus rewarding her own patriotism with a pecuniary compensation.

The title to the north-western territory being now freed from all claimants, the pressure was directed against the Carolinas and Georgia. It is not surprising that Georgia should cling to her western territory with more tenacity and yield it with more reluctance than any of her sister States. Separated from it by no mountain barriers, and lying

in immediate contact, her western possessions seemed more a part of herself, and no adverse interests urged her western settlers to demand a separation. Besides all this, a new complication had now arisen, which disposed the southern claimants of western territory to look with less favor upon a cession of their claims to the United States. This was the spirit manifested by the Northern States to concede to the claims of Spain the temporary control of the Mississippi River as high as Natchez, which was then occupied by Spanish troops. In August, 1786, panting for the revival of trade on any terms, seven Northern States, by their delegates in Congress, approved a plan submitted by Jay to yield to the claims of Spain temporary control of the Mississippi River, and the possession of the disputed territory. The five Southern States violently opposed it, and it was only defeated by lacking the constitutional majority of nine States. Georgia especially resented this disposition to abandon her territory to Spain, and refused to listen to any proposition to cede her territory to the United States.

These events occurring in 1785, and the sectional spirit which they aroused, put an end for the time to any cessions of south-western territory. In 1787, after the excitement and sectional jealousy had been somewhat allayed, although the affairs with Spain were still unsettled, the pressure upon North Carolina and Georgia was revived by the first cession of any south-western territory to the United States. This was the cession by South Carolina of the strip of land which forms the subject of this paper. As far as we can judge of the motives of men, when left to find them with no guide but their acts, it would seem that South Carolina desired to bring to bear on North Carolina and Georgia the same pressure which New York had so successfully exercised on Virginia, with this difference, however, that South Carolina ceded valid, though useless, claims, while New York enjoyed the doubtful honor of attempting to give away what did not belong to her. There may have been also some feeling of pique against Georgia in the action of the Hotspur State, caused by the suit then pending between the two States. The following are the circumstances of the cession—and I will here acknowledge my indebtedness to the courtesy of Mr. Chas. Warren, Acting Commissioner of Education, and to Mr. Spofford, Librarian of Congress, for supplying me with extracts from the records of the Congress of the Confederation, furnishing information that can be found in no work on United States History with which I am acquainted. I present these extracts to the Society in behalf of Mr. Warren, and being too voluminous to read in full, although very interesting, I give a synopsis of their contents, accompanied by such reflections as the subject suggests.

In the year 1785 South Carolina instituted suit against Georgia, before Congress, under the ninth article of the confederation. On June 1 of this year Georgia was summoned to appear on the second Monday of May, 1786.

The following is a portion of the petition of South Carolina :

"To the United States of America in Congress assembled : The petition of the Legislature of South Carolina sheweth that a dispute and difference hath arisen and subsists between the State of Georgia and this State concerning boundaries. That the case and claim of this State is as follows, viz. :

"Charles II., King of Great Britain, by charter, dated the 24th March, in the fifteenth year of his reign, granted, etc. . . . That on the 30th day of June, in the seventeenth year of his reign, the said king granted to the said Lords Proprietors a second charter, enlarging the bounds of Carolina, etc. . . . That Carolina was afterward divided into two provinces called North and South Carolina. That by a charter dated the 9th day of June, 1732, George II., King of Great Britain, granted to certain persons therein named all the lands lying between the rivers Savannah and Altamaha, and lines to be drawn from the heads of those rivers respectively to the South Seas, and styled the said colony Georgia. . . . That South Carolina claims the lands lying between the North Carolina line and a line to be run due west from the mouth of the Tugaloo River to the Mississippi, because, as the State contends, the River Savannah loses that name at the confluence of Tugaloo and Keowee rivers, consequently that spot is the head of Savannah River; the State of Georgia, on the other hand, contends that the source of Keowee is to be considered at the head of Savannah River."

The petition recites other disputed points of boundary, and concludes with a prayer to Congress to take jurisdiction and try the case under the Articles of Confederation.

The case was adjourned from time to time, until Sept. 4, 1786, when both States appeared by their agents. Proceedings were then instituted, and a court appointed to try the case, which was to sit in New York. No judgment was ever rendered by this court in consequence of the compromise of the suit between the parties. Both States appointed Commissioners, who met at Beaufort, S. C., clothed with full powers to make a final settlement. And now comes a singular part of the history and the origin of the twelve-mile strip. These Commissioners—Charles Cotesworth Pinckney, Andrew Pickens, and Pierce Butler, on the part of South Carolina; and John Habersham, Lacklan McIntosh,

a majority of the Commissioners on the part of Georgia—signed an agreement and convention establishing the line as it now exists between the two States, running along the Savannah River and its most northern branch, the Tugaloo, and the most northern branch of the Tugaloo, the Chatuga, to the point where it intersects the North Carolina line. This would have granted all our twelve-mile strip to Georgia, along with the other territory ceded by South Carolina to Georgia in that convention. It so happened, however, that the Legislature of South Carolina was at the same time in session.

On March 8 of the same year, just one month and twenty days before the completion and signature of the convention at Beaufort, the South Carolina Legislature passed a bill conveying to the United States the territory bounded by the Mississippi River, the North Carolina line, and a line drawn along the crest of the mountains, which divide the waters of the East from the waters of the West from the point where these mountains intersect the North Carolina line to the head-waters of the most southern branch of Tugaloo River, and thence west to the Mississippi River, thus mapping out our twelve-mile strip. The delegates of South Carolina were directed to make a deed conveying the same. These two apparently inconsistent acts of South Carolina both needed the confirmation of Congress. They were accordingly presented to Congress on the same day, accompanied by the deed of cession, Aug. 9, 1787. The action of Congress bears marks of worldly wisdom. The cession to the United States was accepted on the same day. The motion to confirm the convention of Beaufort was referred to a committee, who, as far as I can find, never reported. This report was perhaps prevented by the absorbing interest in the constitutional convention then in session, and which completed its labors in the following month by adopting the present constitution, and the Congress of the Confederation soon after passed out of existence, and with it the ninth article, under which the suit of South Carolina was instituted.

I must here notice an error into which Hildreth has fallen. Whatever may be thought of the bias of his politics, or the justice of his reflections, he is certainly reliable in points of fact, and his work might well be styled a *Cyclopedia of United States History*. He evidently wrote it seated by the journal of Congress, following in chronological order each event as it transpired. He thus brings to light many curious and interesting details which the more rhetorical or philosophical historians neglect. I have relied much on his statements in the present sketch. He seems, however, to have fallen into an error in regard to the South Carolina cession, as proved by the extracts from the jour-

nal of Congress, which I have followed in recounting the South Carolina suit and cession. He says: "The geography of this region was not yet well understood, and after this ample cession to the United States of all her remaining western territory, a cession which might as well have been spared, since the lines described by it included nothing."

We have just seen that the cession to the United States was made before the action of the Beaufort Convention, that the two acts were reported to Congress on the same day, and that the Beaufort Convention was never confirmed by Congress. The lines described did, therefore, include something, and did convey a real title.

Thus the twelve-mile strip became the territory of the United States, and intervened as a wedge between Georgia and North Carolina, and afforded for several years a suggestive invitation to cede their western lands. The example was followed by North Carolina in 1790, when, after her patience was exhausted by the attempt to establish the State of Frankland, she ceded her western lands to the United States. Kentucky anticipated the expected second cession of Virginia, and became a State in 1792, without undergoing the territorial apprenticeship.

This left the full pressure of the demand for western cessions to fall on Georgia. This sturdy State resisted until 1802, when her unwilling cession, by no means a free gift, proved to be a shrewd bargain. She then ceded the Territory of Mississippi, nearly all of which was covered by Indian titles, and received in return that portion of the South Carolina cession immediately north of her boundary, \$1,250,000 in money from the proceeds of the sale of public lands, and what ultimately proved very costly to the United States, a guarantee for the extinction of all Indian claims in her present limits. The remaining portion of our twelve-mile strip, all of which, after the admission of Tennessee, was styled in legislation the territory of the United States south of the State of Tennessee, was, in 1804, added by Congress to Mississippi Territory, and now constitutes the northern portion of the States of Alabama and Mississippi.

Northern Boundary of Tennessee.

Read Before the Tennessee Historical Society, March 18, 1884.

THE dividing line between Virginia and North Carolina, a portion of which line now constitutes the northern boundary of Tennessee, was first conceived in the minds of Charles II. and his Council. Its history thus begins in 1665, when, without a "local habitation," it existed as an imaginary line having but one finite end, and purporting to bound unexplored countries. The confusion and disputes which attended the effort to locate and mark it by natural bounds, extended through a large portion of our colonial history, and reached far into our national life. Piece by piece it was extended and patched, following on in the wake of civilization in its westward march, until its final completion in 1859-60, when it was located and marked by the Joint Commission of Tennessee and Kentucky, and confirmed by legislation in both States.

Our history is thus divided into two periods. The first period extends from the grant of Charles II. in 1665 to the Cession Act of North Carolina in 1790, when this line constituted the boundary between Virginia and North Carolina. The second period extends from the Cession Act of 1790 to the final completion of the line in 1860, during which time it constituted, until 1796, the northern boundary of the South-west Territory, and subsequently the northern boundary of Tennessee.

During the first period it was extended by three successive steps. First: In 1728, by a Joint Commission under the authority of King George II. and of the Lords Proprietors of Carolina, it was run 241 miles from the coast to a point on Peter's Creek. Second: In 1749, it was extended to a point on Steep Rock Creek, a distance of eighty-eight miles, by Commissioners of King George II. Third: In 1779-80 it was extended to the Cumberland Mountain by a Joint Commission of North Carolina and Virginia, and was continued to the Tennessee River by the Virginia Commissioners, and its termination marked on the Mis-

Mississippi. The line of the Virginia Commissioners, commonly known as the Walker's Line, was confirmed by two enactments of North Carolina in 1789 and 1790, and by Virginia in 1791.

In the days when European monarchs rewarded their favorites with grants of immense tracts of territory in the New World, they did their surveying at the Council-table, and used oceans and parallels of latitude for boundary lines. Thus, when James I., in 1606, gave the London Company that immense tract called Virginia, he bounds it by the thirty-eighth and thirty-fourth parallels of north latitude, by the Atlantic Ocean and the South Seas. He similarly bounds the territory of the Plymouth Company by the same oceans, and by the forty-fifth and forty-first parallels. The belt of three degrees between these grants he leaves open to either company which shall first occupy the territory. When, in 1609, the same king changed the charter of the London Company, he enlarged the limits of Virginia, and describes the boundaries as follows: "From the point of land, Cape or Point Comfort, all along the sea-coast to the northward two hundred miles, and from said Cape or Point Comfort all along the sea-coast to the southward two hundred miles, . . . up into the land throughout from sea to sea." The territory thus granted to Virginia extended from Cape Fear to Sandy Hook, and included all of what is now North Carolina and Tennessee, and portions of what is now South Carolina, Georgia, Alabama, and Mississippi, as well as all of what is now Maryland, Delaware, and New Jersey, and portions of what is now Pennsylvania and other Middle States. The grant to the Plymouth Company in 1620 made the fortieth parallel their southern limit, and established this parallel of forty degrees as the northern boundary of Virginia. The subsequent dissolution of the London Company by James I. did not change the territorial limits of Virginia, but only its proprietorship, converting it into a royal province. Charles II. attached but little sanctity to the rights of the colony, or the gift of his grandfather. On March 24th, 1662, he granted to some of his favorites, viz.: "Our right trusty and right well beloved cousin and Councillor, Edward, Earl of Clarendon, our High Chancellor of England; our right trusty and right intirely beloved cousin and Councillor, George, Duke of Albemarle," etc., *ad nauseam*, "all that province, . . . within 36° of north latitude," etc. On June 30th, 1665, he enlarged this grant, and named a line destined to become famous in our history and a familiar word to our people, the line of 36° 30'. Col. Byrd tells us how this second grant was brought about: "Sir William Berkeley, who was one of the grantees, and at that time Governor of Virginal,

finding a territory of thirty-one miles in breadth between the inhabited part of Virginia and the above-mentioned boundary of Carolina, advised the Lord Clarendon of it; and his Lordship had interest enough with the king to obtain a second patent to include it." This was perhaps one cause of the unpopularity of Gov. Berkeley in Virginia. In this second grant Charles II. gives to the Lords Proprietors of Carolina "all that province, territory, or tract of ground, . . . extending north and eastward as far as the Carahutke River, or inlet, upon a streight westerly line to Wyonoke Creek, which lys within or about the degrees of thirty-six and thirty minutes northern latitude, and so west in a direct line as far as the South Seas; and south and westward as far as the degrees of twenty-nine inclusive, northern latitude, and so west in a direct line as far as the South Seas," etc.

Thus this profligate monarch, importuned by greedy and unscrupulous courtiers, scarcely giving a thought to the consequences of his action, ignores alike the acts of his predecessors and the vested rights of his subjects, and bounds by an imaginary line a territory which he has no right to convey. Among any other people on the globe, the seeds thus sown, the conflict of title, and unlocated boundary would have borne in future years its legitimate fruit of strife and bloodshed. That this fatal consequence was averted from our ancestors is due, in part, to the abundance of unsettled territory; but it is mainly due to the liberal spirit and fraternal feeling which animated them in the revolution, and to the community of interests awakened by the struggle. In May, 1776, Virginia framed a bill of rights, and enacted a constitution. Section 21 of this instrument declares: "The territory contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina is hereby ceded and confirmed to those States forever." Haywood remarks on this point: "Here was magnanimously cut off and surrendered all the territory which had been taken from Virginia to satisfy the grants to the Lords Proprietors." Haywood is just in calling this action magnanimous. While Virginia could not perhaps have maintained a successful claim to the possession of those territories to which her abstract prior title had so long lain dormant, and had been weakened, if not destroyed, by so many capricious grants from the same power by which it was created, yet her position offered strong temptations to pursue the time-sanctioned European policy, the policy which European statesmen consider sagacious, which has built up all the great powers of Europe at the expense of their neighbors, and which is pursued now, and ever has been pursued throughout the whole history of their diplomacy. That policy would have been to

nurse her claims, to hold them as a perpetual thorn in the side of her sister States, to prevent the formation of the Union, to make herself the great central absorbing power, and gradually to encroach on the lesser States. Such a policy was favored by a portion of her politicians, and was feared by several of the smaller States, especially by Maryland. Had a monarch ruled the destinies of Virginia, such would have been the inevitable tendency of events. With a territory undisputed from the fortieth parallel to $36^{\circ} 30'$, except the little corner which included Maryland, Delaware, and portions of Pennsylvania and New Jersey; with actual possession joined to best title, and the right acquired by conquest from Great Britain, to all the unoccupied western lands up to the lakes; with wealth, population, and resources then far superior to any of her sister States, the prospect was certainly alluring, had the ambition of Virginia aimed at empire. But a far different spirit animated her people. Fired with the love of liberty, and struggling for their own freedom from the grasp of Great Britain, no thought entered their minds of aggression against the brethren fighting by their sides. Impelled by this spirit of her people, she devoted her efforts to bind the States in a fraternal compact, to remove all causes of jealousy, and to build up a great and permanent Federal Republic, she hastened to surrender all claims to the territory of her sister States, and to dismember herself of her own vast domains. In her great cession of the territory north-west of the Ohio—the greatest cession of territory in the history of the world ever voluntarily made by a powerful State able to defend it—she invited the other States to follow her example, and thus made possible the local governments and magical development of the West, and she averted the jealousy and possibly the anarchy and bloodshed that might have followed the assertion of her claims. As we see her thus voluntarily stripping herself of her territory until she shrinks up between the Alleghanies and the Atlantic, shall we view her with that kindly pity which we feel for the man whose good-natured weakness has permitted greatness and fortune to fall from his grasp? Does not her course rather reveal a broad wisdom which European statesmen have never been able to comprehend, and a philanthropy which looked to the good of mankind and not to the grasping of power, or the extension of State lines? Whether we consider her magnanimous or weak, we cannot refuse the praise which poets and historians may bestow with kindling warmth but which the world echoes with faint applause:

Less great in what thou art
Than in that thou hast forborne to be.

But whatever may be our reflections on the course of Virginia, it is at least certain that her action in 1776 forever quieted all questions of conflict of title to the territory of North Carolina. It now remained to complete the location of this imaginary line—this line which, though it failed to bring on the conflict of title and territory which the careless and selfish kings of England had bequeathed as a legacy to America, was yet destined to bear some of its bitter fruit, and to become famous in our history in another and more recent struggle, the contest for the limitation of slavery west of the Mississippi.

The colonial disputes about the location of the line $36^{\circ} 30'$ were not between the people of the two colonies, but between the Crown and the Lords Proprietors, Virginia being then a royal province and Carolina a proprietary government. The first dispute occurred in 1710. The respective commissioners met, and could not agree upon the starting-point by a difference of about fifteen miles. They separated without doing any thing. The Royal Commissioners made a report to Queen Anne, bringing serious charges against the Commissioners of the Lords Proprietors of Carolina. On March 1, 1710, an order of Council was issued, from which I quote the following: "That The Commissioners of Carolina are both of them Persons engag'd in Interest to obstruct the settling of the Boundaries; for one of them has been for several years Surveyor General of Carolina, and has acquired great Profit to himself by surveying Lands within the controverted Bounds, and has taken up several tracts of land in his own Name. The other of them is at this time Surveyor General, and hath the same prospect of advantage by making future surveys within the said bounds." The order concludes: "Her Majesty, in Council, is pleased to order, as it is hereby ordered, the Rt. Honble the Lords Commissioners for Trade and Plantations Do signifye her Majesty's pleasure herein to her Majesty's Governor, or Commander-in-chief of Virginia for the time being, and to all persons to whom it may belong, as is proposed by their Lordships in said Representation, and the Rt. Honble the Lords Proprietors of Carolina, are to do what on their part does appertain." Col. Byrd, the Virginia Commissioner in 1728, defends the Carolina Commissioners against the charges above quoted. In obedience to this order, a conference was held between the respective Governors, Chas. Eden and Alexander Spotswood, and an agreement was signed "That from the mouth of Corotuck River, or Inlet, and setting the compass on the north Shoar thereof, a due West line be run, and fairly marked," etc. This agreement bears no date, and was forwarded to King George I. for his approval. "At the Court of St. James's, the 28th day of March, 1727. Present, the King's Most Ex-

cellent Majesty in Council. . . . His Majesty is hereupon pleas'd with the advice of his Privy Council to approve the said Proposals, . . . and to order, as it is hereby ordered, that the Governor, or Commander-in-chief, of our Colony of Virginia do settle the said Boundaries, in conjunction with the Governor of North Carolina, agreeable to said Proposals." In accordance with this order, the Royal Commission was issued: "George II., by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, to our well-beloved William Byrd, Richard Fitz William, and William Dandridge, Esqrs, members of our Council of the Colony and Dominion of Virginia, Greeting: Whereas our late Royal Father of Blessed Memory," etc. This commission is dated Dec. 14th, 1727, "in the first Year of our Reign." The Carolina Commission runs in the name of the Lords Proprietors. "Sir Richard Everard, Baronet, Governor, Captain General, and Commander-in-chief of the said Province: To Christopher Gale, Esqr, Chief Justice, John Lovick, Esqr, Secretary, Edward Mosely, Esqr, Surveyor General, and William Little, Esqr, Attorney General, Greeting: . . . I, therefore, reposing especial trust and confidence in you, . . . to be Commissioners on the part of the true and absolute Lords Proprietors." It is dated February 21st, 1728. The Commissioners met March 6th, 1728, and after some disputes, placed a cedar post on the north shore of Currituck Inlet, as their beginning point in latitude $36^{\circ} 31'$, and from that point ran a due west course, as they supposed, allowing 3° west for the variation. They passed through the Dismal Swamp, and gained, as Col. Byrd expresses it, "immortal reputation by being the first of mankind that ever ventured through the great Dismal." At Buzzard Creek, about 169 miles from the coast, the Carolina Commissioners abandoned the work on Oct. 5, 1728. Col. Byrd and Mr. Dandridge continued the line seventy-two miles farther, to a point on Peter's Creek, a tributary of Dan River, near the Sauratown, 241 miles and 30 poles from the coast, marking the termination on a red oak Oct. 26, 1728. A complete account of this line was afterward given by Col. Byrd in a delightful work entitled "The History of the Dividing Line." Col. Byrd was a courtier and wit of the first order. Even Dickens would not criticise us for calling him a "remarkable man." He was the most popular and influential man of his day in Virginia. In his elegant country-seat of Westover, on James River, he was the most hospitable of cavaliers and the most genial of companions. Sparkling all over with wit, his History of the Dividing Line is perhaps the most entertaining book ever written on so dry a subject. I have alluded to his characteristics, be-

cause they produced an important effect on the location of the line of which he was the historian and the father. With his cheerful and generous nature, he combined a hot temper and a lofty pride. He fully expected all the people along the border to be clamorous for the honor of belonging to Virginia. He was disgusted to find that they all desired to fall on the Carolina side of the line. After spurning out his indignation, true to his generous nature, he favored their wishes as far as his instructions would permit, and consented to the location of the line about a mile north of $36^{\circ} 30'$. In his history, however, he cannot help firing a few parting shots, of which the following will serve as a specimen: "We constantly found the Borderers laid it to heart if their land was taken into Virginia. They chose much rather to belong to Carolina, where they pay no tribute to God or Cæsar." Of the action of the Carolina Commissioners in abandoning the work on Oct. 5, I give Col. Byrd's opinion in his own language: "We lay still the next day, being Sunday. The Gentlemen of Carolina assisted not at our Public Devotions, because they were taken up all the morning in making a formidable protest against our proceeding on the line without them. . . . In the afternoon Mr. Fitz William, one of the Commissioners from Virginia, acquainted his colleagues it was his opinion that by his Majesty's Order they could not proceed farther on the line but in conjunction with the Commissioners of Carolina, for which reason he intended to retire the next morning with those gentlemen. This lookt a little odd in our Brother Commissioner, tho' in justice to him, as well as our Carolina Friends, they stuck to us as long as our good Liquor lasted, and were so kind as to drink our good journey to the Mountains in the last bottle we had left. . . . This Gentleman had a stil stronger reason for hurrying back to Williamsburg, which was that neither the General Court might lose an able judge nor himself a double salary, tho' he did but half the work, in which, however, he had the misfortune to miscarry when it came to be fairly considered." Col. Byrd, with the remainder of his party, as we have seen, completed the line to Peter's Creek, as he expresses it, "within the shadow of the Chariky Mountains, where we set up our pillars like Hercules, and returned home." He closes his pleasant narrative as follows: "Nor can we by any means reproach ourselves of having put the Crown to any exhorbitant expense in this difficult affair, the whole charge from beginning to end amounting to no more than £1,000. But let no one concerned in this painful Expedition complain of the scantiness of his pay so long as His Majesty has been graciously pleased to add to our Reward the HONOUR of his ROYAL approbation, and to declare, not-

withstanding the Desertion of the Carolina Commissioners, that the line by us run shall hereafter stand as the true Boundary betwixt the Governments of Virginia and North Carolina."

The second step in the location of this line was taken in 1749, when it was continued from Peter's Creek to a point on Steep Rock Creek, a distance of eighty-eight miles, being in all 329 miles from the coast. There is no incident of special interest in this extension. It may, however, be noted that one of the Virginia Commissioners was Peter Jefferson, the father of Thomas Jefferson. His colleague was Joshua Fry, Professor of Mathematics in William and Mary College. The Carolina Commissioners were Daniel Weldon and William Churton. In one respect this Commission deserves notice. Of the four joint Commissions of North Carolina and Virginia, this was the only one which engaged in no disputes, and the only one from which the Carolina Commissioners failed to protest and withdraw. North Carolina was now, like Virginia, a Royal Province. The Commissioners of both provinces held under the same authority, the King. This may account for their harmony.

No other step was taken in the location of the boundary until after the beginning of the Revolution. We now find commissions worded in a different style, and for the first time look for their creation in legislative enactments. In 1779 we come to the third step. Urged by pressing demands from their western settlers, the legislatures of the two States found time in the midst of the Revolutionary struggle to appoint a joint Commission to extend their boundary. The Commissioners, Col. Henderson and William B. Smith, on the part of North Carolina, and Thomas Walker and Daniel Smith on the part of Virginia, met in September, 1779. They failed to find the point at which Fry and Jefferson and Weldon and Churton ended their line on Steep Rock Creek. On September 6th memoranda of agreement were entered on the books of both parties to the effect "that the point of observation was in north latitude $36^{\circ} 31' 25''$, and in west longitude $81^{\circ} 12'$." They ran due south one mile to a point supposed to be in latitude $36^{\circ} 30'$, "to the satisfaction of all." From this point they ran a line, which they supposed to be due west, about forty-five miles to Carter's Valley. Here a disagreement occurred, and the two Commissions separated, running parallel lines about two miles apart, the line of the Carolina Commissioners, generally known as Henderson's Line, being north of the line of the Virginia Commissioners, commonly called Walker's Line. The Carolina Commissioners continued their line as far as Cumberland Mountain. At this point they abandoned the work, after sending a letter of

protest against Walker's Line. The Virginia Commissioners continued to Tennessee River, leaving an unsurveyed gap from Deer Fork to the first or east crossing of Cumberland River, a distance which they estimated to be 109 miles. Subsequent surveys place this distance at ninety-seven miles. The total distance of Walker's Line, as given in the report of the Virginia Commissioners, is: "From Steep Rock Creek to Deer Fork 123½ miles; unsurveyed gap (estimated), 109 miles; from first or east Cumberland crossing, to second or west Cumberland crossing, 131 miles; thence to Tennessee River 9½ miles; making a total of 373 miles. This added to Fry and Jefferson's Line, 88 miles, and Byrd's line, 241 miles, makes the total length of the boundary thus far extended from the coast to the Tennessee River, 702 miles. The Commissioners, although not authorized to extend the line beyond Tennessee River, proceeded to mark its termination on the Mississippi, but did not survey the intervening distance. In consequence of the failure to make due allowance for the variation of the needle, Walker's Line deflected continuously to the north. Col. Byrd's error of allowing too great a variation contributed to the same result, the two lines being on opposite sides of the line of no variation. Either on account of the imperfection of their astronomical instruments, or from a failure to test their work by a sufficient number of astronomical observations, the Commissioners seemed not to detect, or at least did not correct, this constant northward deflection. Walker's Line first touched Tennessee near latitude $36^{\circ} 34'$, and reached Tennessee River near latitude $36^{\circ} 40'$, more than twelve miles too far north in a direct line, or about seventeen miles by way of the river. This fact has been established by subsequent surveys with more accurate instruments. Henderson's Line, running two miles north of Walker's Line, was of course still further wrong. In consequence of the disagreement of the Commissioners, no immediate action was taken by the two States. In 1789 a committee of the North Carolina Legislature, of which Gen. Thomas Person was chairman, made a report, recommending the adoption of Walker's Line. This report was "concurrent with" by both houses. At the same session of the Legislature the act was passed ceding the Western Territory, which is now Tennessee, to the United States. Under the law of North Carolina all acts related to the first day of the session. Thus the resolution adopting Walker's Line and the Cession Act bore even date. The deed executed to Congress by the Senators of North Carolina in pursuance of the Cession Act was dated Feb. 25, 1790, and the deed was accepted by Congress April 2, 1790. On Nov. 2, 1790, Gen. Person, again chairman of the Carolina Committee on Boundaries, in consequence of doubts

as to the formality and sufficiency of the previous action of the Carolina Legislature, made a second report, recommending as follows: "That the boundary line between the States of North Carolina and Virginia be confirmed agreeable to a report of a committee, concurred with by both houses last session of assembly, and that a law be passed confirming the line commonly called Walker's Line as the boundary between the States of N. Carolina and Virginia, and reserving the rights of the oldest patents, grants, or entries made in either of the States." On Dec. 11, 1790, this report was "read and concurred with" by both houses. It will be observed that in the first report, made in 1789, which was "concurred with" and made the basis of the second report, and thus for the second time "concurred with," the following fact is distinctly set forth. I quote the language: "Mr. Walker and the other Commissioners from Virginia extended the line to Tennessee River, and marked its termination on the Mississippi from observations, leaving the line from the Tennessee to that place unsurveyed." The action thus adopting Walker's Line as clearly extended it to the Mississippi as if posts had been placed every five miles between. This action was satisfactory to Virginia, and on Dec. 7, 1791, Walker's Line was confirmed by the Legislature of Virginia. Thus the boundary was regarded by both States as finally settled.

This brings us to the second period of our history, which opens with a curious complication. In 1792, William Blount, Territorial Governor of Tennessee, insisted that the first resolution of the Carolina Legislature in 1789 was not a legal confirmation of Walker's Line; and that the second resolution of 1790, passed many months after the acceptance of the Cession by Congress, was invalid as to the United States, of which Tennessee was then a territory. He further urged that North Carolina had for ten years before the Cession exercised jurisdiction to Henderson's Line, and announced his intention of maintaining the same. A correspondence ensued between him and Governor Lee, of Virginia, which resulted in a proclamation from Governor Blount asserting jurisdiction to Henderson's Line, and a counter proclamation from Governor Lee asserting jurisdiction to Walker's Line. Matters remained in this confused and somewhat hostile shape until 1801, when the two States appointed a joint Commission to determine the true boundary. On Dec. 18, 1802, Joseph Martin, Creed Taylor, and Peter Johnson, on the part of Virginia, and John Sevier, George Rutledge, and Moses Fisk, on the part of Tennessee, met at Cumberland Gap. Failing to "unite in the result of their astronomical observations," they entered into a compromise, and unanimously agreed to run the boundary par-

allel to the two lines in dispute and midway between them, about one mile from each. The surveyors, Brice Martin and Nathan B. Markland, surveyed this line, and marked it with five chops in the shape of a diamond. In 1803 the acts of the Commissioners were confirmed by appropriate legislation in both States. The boundary between Virginia and Tennessee was thus finally established. Although subsequent negotiations have occurred, no change has been made. On March 1, 1858, Tennessee passed enactments, and on March 18, 1858, Virginia passed similar enactments, creating a joint Commission to re-mark, by permanent landmarks, the line as agreed on in 1803. Samuel Milligan and George R. McClellan, Commissioners for Tennessee, and Leonidas Baugh and James C. Black, Commissioners for Virginia, re-marked this line in 1859. Their acts were rejected by Virginia on March 9, 1860, and were never confirmed by Tennessee. In consequence of the war, the proposition of Virginia in 1860 to appoint another Commission was not acted on by Tennessee. In 1870 Virginia proposed a readjustment of her boundaries with Maryland, North Carolina, and Tennessee, and appointed a Commission consisting of Henry A. Wise, William Watts, and D. C. DeJarnette. The proposal of Tennessee was transmitted to the Legislature by Governor Senter in his message of Dec. 13, 1870, inclosing a communication from Governor Gilbert C. Walker of Virginia, together with the Virginia enactment. Virginia proposed to refer the line for readjustment to a joint Commission of the two States, assisted by a corps of skillful engineers in the service of the United States. A resolution was passed in the Tennessee Senate to authorize the appointment of three Commissioners, but failed to pass the House. In the following year Governor John C. Brown called the attention of the Legislature to the subject. A joint committee of the two houses was appointed, consisting of Henry R. Gibson, F. W. Earnest, Wm. Greene, V. C. Allen, J. H. Cross, W. S. McGaughey, L. M. Wester, and W. H. Anderson. This committee gave the subject a thorough investigation. Their report, although it contains an error in argument, is an excellent history of this part of the line, and a State paper of marked ability. After reviewing the whole question, they recommended a joint resolution, which was adopted March 28, 1872. I quote the following portion: "That the Governor of this State be instructed to inform the Governor of the Commonwealth of Virginia that Tennessee declines to do any act, or to entertain any negotiation, looking to a reopening of the question of boundary between the two States, but regards said boundary as fixed and established beyond dispute and forever." This act of Tennessee was certainly right, and due

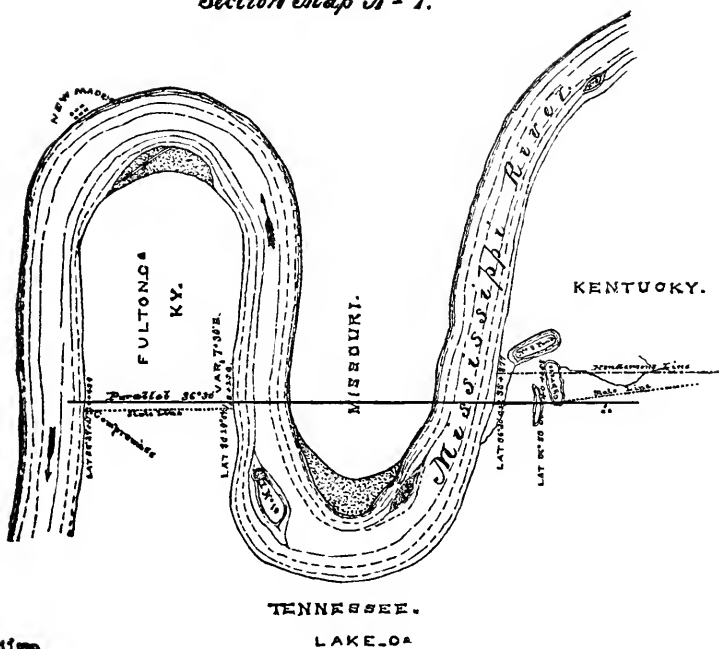
to her citizens. The language above quoted is firm, dignified, and sufficient. The same cannot be said for the following clause of her resolution: "That any move on our part tending to unsettle and disestablish said boundary, or even awaken a doubt as to its perfect validity and inviolable unalterability, is *mischievous and wanton*, and not only uncalled for, but to be utterly discountenanced and condemned." This language is not only sophomoric, but it contains a plainly implied and sharp rebuke, which the circumstances connected with the history of this line rendered it peculiarly ungracious in Tennessee to administer. In fact, both States abated somewhat of their dignity—Virginia in requesting the reöpening of a question settled by her own act in 1803, and acquiesced in for sixty-seven years; Tennessee, in using unamiable language and rebuking her older sister. This negotiation, then, produced no effect. Tennessee refused to reöpen the matter, and held on to her acquisition. The compromise of 1803 may, therefore, be regarded as the final settlement.

After this final adjustment of her boundary with Virginia in 1803, Tennessee found an unexpected and troublesome controversy on her hands, growing out of the same questions. Kentucky had discovered that Walker's Line was several miles north of $36^{\circ} 30'$. In the repudiation of the Carolina and Virginia compact by Tennessee, Kentucky saw her opportunity. Her argument now came with great force: "Since by your own showing the confirmation of Walker's Line by Virginia and North Carolina is invalid as to us, then we have no dividing line except the old imaginary line of $36^{\circ} 30'$. Let us move down south, and locate it." This threat was the more ominous when Kentucky refused to make any convention on the basis of Walker's Line, though repeatedly urged by Tennessee enactments in 1803, 1815, and 1817. In 1813, by an act approved Feb. 13, she gives the following intimation: "Whereas Tennessee proposes to depart from the true line of separation . . . to be ascertained by correct and scientific observation," etc., the Governor is directed to inform the Governor of Tennessee "that the disagreeable necessity is imposed upon Kentucky of having the long-contested question finally settled by the means pointed out by the Constitution of the United States."

Her act of Feb. 10, 1816, offers a compromise, provided the same is accepted by Tennessee at the next session of her Legislature. She offers to adopt Walker's Line from "Obed's *alias* Aba's River to the Tennessee River," the remaining portions of the line, both east and west, to be on latitude $36^{\circ} 30'$, this line to be located by a joint Commission. This offer proposed to place about 180 miles, a little over half the total

boundary, on latitude $36^{\circ} 30'$. The action of the Tennessee Legislature in 1817, failing to accept this compromise, and again proposing a joint Commission on the basis of Walker's Line, seemed to irritate her neighbor. Kentucky replied by the following spicy enactment of January 30, 1818: "That all laws heretofore enacted by the General Assembly of this Commonwealth relative to the boundary line of this State and the State of Tennessee shall be, and the same are hereby, repealed. . . . Be it further enacted that the southern boundary line shall be and remain on a line running west from the top of Cumberland Mountain to the Mississippi River in $36^{\circ} 30'$ north latitude, any thing in any former law passed by this State to the contrary notwithstanding." In the following year, 1819, she sent her surveyors, Alexander and Munsell, to run and mark a line on $36^{\circ} 30'$ between the Tennessee and Mississippi Rivers, and declared this to be the true boundary. This line struck Tennessee River about seventeen miles south of Walker's Line by way of the river, and if continued would have passed south of the town of Clarksville. Tennessee now required the utmost skill of her diplomatists to extricate her from the false position of claiming jurisdiction by virtue of a line, the validity of which she had solemnly repudiated. Her authorities were thoroughly alarmed. Kentucky had now taken an aggressive step, and seemed ready to follow it up by vigorous measures. Tennessee could no longer rest quiet in possession, and rely on the inertia of republican institutions. Some plea must be found of "avoidance" without "confession." This plea Governor Joseph McMinn supplies in his message of Oct. 6, 1819. It was the only argument which Tennessee had left, but it was an argument logical and potent in America—"the wishes of the people." He says: "The citizens of both States, who live in the neighborhood of Walker's Line, seem to be perfectly satisfied with that boundary, and would be opposed to any alteration. . . . There is no proper alternative left to the authorities of the two States, if they consult the interests of their citizens, but to establish Walker's Line as far as the eastern bank of Tennessee River." He points to the necessity of a compromise: "I submit to your consideration the necessity of employing some mathematician of known skill, . . . to ascertain the latitude of $36^{\circ} 30'$ on the western bank of Tennessee River. . . . If the line recently run by the State of Kentucky between the rivers Tennessee and Mississippi should be in the latitude called for by the charter of this State, it must and ought in justice to stand." This compromise losing more in the west than had been gained in the east, need never have been offered had not Tennessee been estopped from plead-

Section Map No. 1.



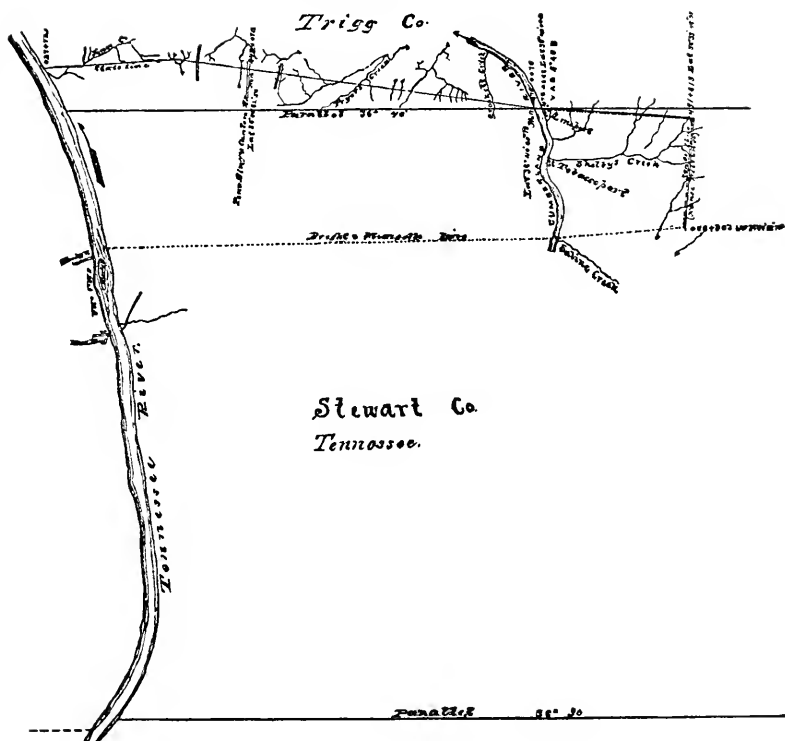
ing the Virginia and Carolina compact confirming Walker's Line. It will be remembered that this confirmation extended to the termination marked on the Mississippi.

Since legislative invitations and enactments had failed to draw a settlement from Kentucky, the Legislature of Tennessee determined to send Commissioners to visit the Kentucky Legislature. For this delicate task they selected, by joint ballot, Felix Grundy and William L. Brown, and clothed them with absolute powers to conclude a treaty. The ability and address of Judge Grundy and his colleague were never more needed and never more conspicuously shown. Kentucky was in earnest in her claim to this whole strip of territory. She saw that a joint Commission could not advance her claims, and her Legislature was in no compromising mood. It is due to the persuasive influence and diplomatic skill of Judge Grundy and his colleague that Kentucky was finally induced to appoint a Commission. Her Commissioners were two of her ablest men, John J. Crittenden and Robert Trimble, and her argument as to abstract title was unanswerable. Yet, handicapped and estopped as they were, the Tennessee Commissioners successfully urged "actual possession," "the wishes of the people," and the many annoyances and hardships which would result from a change, and offered as a liberal compromise to let all lines stand as they were, acknowledging Alexander and Munsell's Line. Finally the sober second thought of Kentucky yielded her abstract claims to the general good, and bowed to the will of the people. A compromise was effected Feb. 2, 1820, which is so well known that I need not rehearse it. The treaty contained ten articles. The boundary was to be Walker's Line to the Tennessee River; thence up and with said river to Alexander and Munsell's Line; thence with said line to the Mississippi; this line to be hereafter marked when demanded by either State; legislation to be enacted with regard to land-titles, in accordance with certain stipulations; the treaty to be valid, if ratified by the Legislature of Kentucky at the session then pending. This ratification was duly given. Pending this negotiation, however, on Nov. 27, 1819, the Legislature of Tennessee, either fearful of the result or rætive about the matter, passed an act directing the Governor, in case of the failure of the Commissioners to make a treaty with Kentucky, to appoint surveyors, and have a line run and marked from the termination of Walker's Line on Tennessee River to the point marked by Walker in 1780 on the east bank of the Mississippi. This act was rendered inoperative by the conclusion of the treaty. Haywood remarks: "As is the fate of every treaty, good or bad, . . . this treaty, as soon as it saw the light, was en-

Sec. N^o 8.

Kentucky.

Trigg Co.



Stewart Co.
Tennessee.

countered by an exceedingly animated opposition. It, however, finally triumphed; the Legislature recognized its validity and provided for its execution." The line thus agreed on became the established boundary from the date of its confirmation by Kentucky in 1820. Many inconveniences, however, continued to result from the loss of some of the landmarks of Walker's Line and the uncertainty with regard to others, and the unsurveyed gap left by Dr. Walker between Deer Fork and Cumberland River. Although the main points were finally settled, troublesome minor questions were raised, which required for their adjustment several negotiations and joint commissions between the two States. The limits of this paper will not permit a history of the legislation in reference to the adjustment of land claims, although it is intimately connected with the history of the boundary.

In 1821 a joint Commission, consisting of Wm. Steele, on the part of Kentucky, and Absalom Looney, on the part of Tennessee, surveyed and marked the gap in Walker's Line, extending their survey from the east crossing of Cumberland River to Cumberland Gap. Their acts were confirmed by Tennessee Nov. 13, 1821, and by Kentucky Nov. 22, of the same year. A line was also run by Mr. Henderson in 1821 between the Tennessee and Mississippi rivers, coinciding very nearly with Alexander and Munsell's Line.

On Sept. 19, 1831, the message of Governor Carroll announced to the Legislature of Tennessee that in accordance with their act of the previous session, he had appointed James Bright Commissioner for Tennessee; that Mr. Bright, in conjunction with Dr. Munsell, the Commissioner for Kentucky, had run and marked Walker's Line along the southern borders of Allen, Simpson, and Trigg counties. He recommends the confirmation of their acts. This line is shown, in part, in Map No. 8, accompanying this paper. It continues Walker's Line straight from the point near the west crossing of Cumberland River to the Tennessee. It would, if adopted, have thrown into Kentucky a strip of land which is now a portion of Tennessee.

In 1845 Governor James C. Jones alludes in his message to difficulties arising with Kentucky in relation to the boundary line; and announces that in accordance with the act of the previous session he had appointed C. W. Nance and William P. McLain as Commissioners on the part of Tennessee. These Commissioners in Oct., 1845, met the Commissioners of Kentucky, Messrs. Wilson and Duncan, and marked a line along the borders of Trigg and Christian counties, and along that portion of the border of Fulton county west of Reel-foot Lake. A portion of their line is shown in Map No. 8. These different lines,

however, patching up portions of the boundary, were all readjusted in 1859.

As disputes continued to arise, both States saw the necessity of a final and permanent adjustment and marking of their common boundary throughout its whole extent. The necessary enactments were passed by both States in 1858 creating a joint Commission, who were required to place stone posts on the line, five miles apart, to use other permanent landmarks, to make duplicate written reports, to be filed in the archives of the respective States, accompanied by topographical maps, and such geographical information as they should be able to collect.

In 1859 this joint Commission, consisting of Benjamin Peeples and O. R. Watkins, Commissioners; O. H. P. Bennett, Engineer; J. Trafton, L. Burnett, Assistant Engineers; and J. M. Nicholson, Surveyor, on the part of Tennessee: Austin P. Cox and C. M. Briggs, Commissioners; J. Pillsburg, Engineer; G. Trafton, G. Stealey, and A. Heusley, Assistant Engineers, on the part of Kentucky, met at a place which they named Compromise, on the Mississippi River. Having improved instruments and superior facilities, they made an accurate and satisfactory survey, placing the stone posts as required, and marking the line on permanent trees with four chops fore and aft. They also cleared a distance of five feet on each side of the line, and marked permanent trees facing the line with the initial letters of their respective States, "K." and "T."

From Compromise, latitude $36^{\circ} 29' 55.7''$, they followed very nearly along Alexander and Munsell's Line to its termination on the Tennessee in latitude $36^{\circ} 29' 54''$. This line frequently crosses the parallel $36^{\circ} 30'$, very nearly coinciding with it. Thence they ran down the Tennessee to Walker's Line, the latitude of which they failed to mark, but which is not far from $36^{\circ} 40' 45''$ at the point where it touches the Tennessee River. Thence they followed Walker's Line to the southeast corner of Kentucky, in latitude $36^{\circ} 34' 53.48''$. Thence they ran to the end of their line, the south-west corner of Virginia, in latitude $36^{\circ} 36' 0.92''$. Their report—made in duplicate to Governor Isham G. Harris, of Tennessee, and Governor Magoffin, of Kentucky, on Nov. 11, 1859—discusses the questions connected with the running of the various lines in 1821, 1830, and 1845, and gives twenty-seven section-maps tracing these lines. I present to the Society accurate copies of three of these maps, taken from the originals on tracing-cloth, and prepared for me by Engineer E. F. Batte. These will serve to show the salient points of these lines. The Commissioners state that they found no landmarks

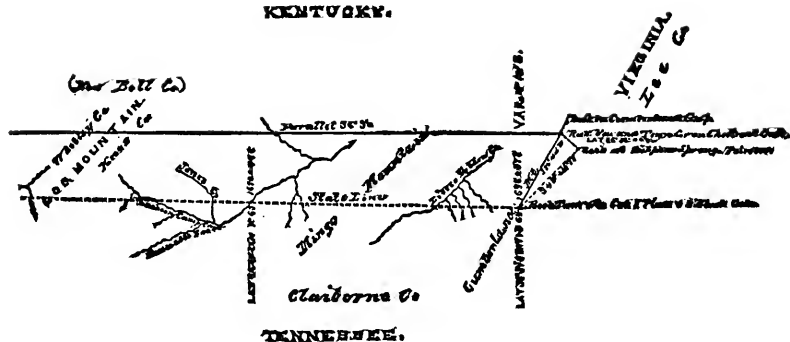
of Walker's Line west of the first or eastern crossing of Cumberland River, and they do not believe that their predecessors ever found any. They therefore ran the line in accordance with the language of the statute creating their powers, which followed the phraseology of the convention of 1820: "Walker's Line, as the same is reputed, understood, and acted upon by the two States, their respective authorities and citizens." This survey cost Tennessee \$25,357, and cost Kentucky \$22,630.07. The stone posts cost \$1,265. The acts of the Commissioners were confirmed by Kentucky on Feb. 28, 1860, and by Tennessee on March 21, 1860.

Thus after a controversy of sixty-eight years, extending from 1792 to 1860, was finally established the title of Tennessee to the strip of territory north of $36^{\circ} 30'$. This strip extends from White Top Mountain to Tennessee River, a distance of about 355 miles. The portion adjoining Virginia is about 110 miles long and averages about 7 miles wide. The portion adjoining Kentucky is about 245 miles long, and about $5\frac{3}{4}$ miles wide at its eastern extremity, gradually increasing in width toward the west till it reaches the Tennessee River about $12\frac{1}{2}$ miles wide. For this acquisition Tennessee is indebted, in the first place, to the failure of the Virginia and Carolina Commissioners to make due allowance for the variation of the needle, thus causing their lines to swerve continuously to the north; in the second place, to the fidelity and ability of her public servants; and finally, to the preference of the people along the border to live within her jurisdiction, and to the conservatism and liberal spirit of her sister States, which led them to respect the wishes of the people.

Her boundary lines now skirt her borders, visible in permanent landmarks, and appear on her statute-books described by natural bounds. Yet, strange to say, her Constitution of 1870 still adheres to the old imaginary lines, and describes her northern boundary as $36^{\circ} 30'$, copying the language of the Cession Act, and of the State Constitutions adopted prior to the final adjustment and location of the boundaries. This loose description is guarded by the following saving clause: "Provided that the limits and jurisdiction of this State shall extend to any other land and territory now acquired by compact or agreement with other States, or otherwise, although such land and territory are not included within the boundaries hereinbefore designated." This ingenuous saving clause was truly necessary; but as a description it is certainly more elastic than instructive. The distinguished statesmen who constituted the Committee on the Bill of Rights, and framed this description, may have been induced by a desire of preserving the time-honored phrase-

Section Map No. 27

KENTUCKY.



ology which a long-continued reverence for former Constitutions had rendered tuneful to their ears. Possibly other portions of constitutional frame-work, more congenial to the legislator, may have so occupied their time as to prevent a reference to the statutes, or a visit to the archives. It may have been that this method of description was adopted for reasons of political wisdom, apparent to the constitutional lawyer, but which fail to reveal themselves to the historian.

In preparing the "History of the Northern Boundary of Tennessee," I have consulted the following authorities:

Byrd's History of the Dividing Line.

Thomas Jefferson's Works.

Cooke's History of Virginia.

Wheeler's History of North Carolina.

Ramsay's History of South Carolina.

Marshall's History of Kentucky.

Haywood's History of Tennessee.

Ramsey's Annals of Tennessee.

Ridpath's History of the United States.

Charters and Constitutions of the United States, by Ben Perley Poore.

Statutes, Journals, Revisals, etc., of Virginia, North Carolina, Tennessee, and Kentucky.

The Manuscript Report of the Joint Commission of Tennessee and Kentucky, submitted to Governor Isham G. Harris, Nov. 11, 1859, with accompanying maps on file in the office of the Secretary of State of Tennessee.





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